

Aquaculture and Fisheries (Scotland) Bill

[AS INTRODUCED]

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Aquaculture and Fisheries (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision in relation to fish farms and shellfish farms; in relation to the parasite *Gyrodactylus salaris*; in relation to salmon and freshwater fisheries and sea fisheries; in relation to payments connected with aquaculture and fisheries; and for connected purposes.

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PART 1

FISH FARMS AND SHELLFISH FARMS

Information

1 Information about fish farms and shellfish farms

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(1) The Scottish Ministers may make an order if it appears to them necessary or expedient to do so for the purpose of obtaining information in relation to the prevention, control and reduction of parasites—

- (a) on fish farms,
- (b) on shellfish farms.

15

(2) An order under subsection (1) may require any person who carries on a business of fish farming or shellfish farming—

- (a) to provide to the Scottish Ministers such information, in writing, as may be specified in the order in relation to the purpose mentioned in that subsection,
- (b) to compile such records as may be so specified in relation to that purpose,
- (c) to retain for such period (not exceeding 3 years) as may be so specified, any records compiled by virtue of paragraph (b).

20

(3) The Scottish Ministers may make an order if it appears to them necessary or expedient to do so for the purpose of obtaining information in relation to—

- (a) the containment of fish on fish farms,
- (b) the prevention of escape of fish from fish farms,
- (c) the recovery of escaped fish.

25

(4) An order under subsection (3) may require any person who carries on a business of fish farming—

- (a) to provide to the Scottish Ministers such information, in writing, as may be specified in the order in relation to the purpose mentioned in that subsection,
- (b) to compile such records as may be so specified in relation to that purpose,
- (c) to retain for such period (not exceeding 3 years) as may be so specified, any records compiled by virtue of paragraph (b).
- (5) An inspector may require the production of, and inspect and take copies of, any records which a person is required to retain by virtue of an order under this section.
- (6) Information provided, records compiled and records retained by virtue of an order under this section may be provided, compiled and retained electronically.

2 Information: offences

- (1) A person commits an offence who—
- (a) fails, without reasonable excuse, to comply with a requirement of an order under section 1,
- (b) in purported compliance with a requirement of an order under section 1 knowingly provides any information or compiles a record which is false in a material particular,
- (c) knowingly alters a record compiled in accordance with a requirement of an order under section 1 so that the record becomes false in a material particular.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Parasites

3 Inspections: parasites

- (1) An inspector may carry out inspections of—
- (a) fish farms,
- (b) shellfish farms,
- for the purposes mentioned in subsection (2).
- (2) The purposes are—
- (a) ascertaining the levels (if any) of parasites,
- (b) assessing the measures in place for the prevention, control and reduction of parasites.
- (3) In particular, an inspection under subsection (1) may include—
- (a) taking samples (including samples of or from fish and shellfish),
- (b) examining, and taking copies of, documents or records.
- (4) An inspector may arrange for the carrying out of such tests as the inspector considers necessary, using samples taken during an inspection under subsection (1), for the purposes mentioned in subsection (2).

4 Meaning of parasite in Part 1

- (1) In this Part, “parasite” means any of the following—
- (a) *Caligus elongatus*,
 - (b) *Lepeophtheirus salmonis*.
- (2) The Scottish Ministers may by order modify the meaning of parasite in subsection (1).

Containment and escape: fish

5 Inspections: containment and escape of fish

- (1) An inspector may carry out inspections of fish farms for any of the purposes mentioned in subsection (2).
- (2) The purposes are—
- (a) ascertaining the risk of escape of fish from the fish farm,
 - (b) ascertaining whether fish have escaped from the fish farm,
 - (c) assessing the measures in place for—
 - (i) the containment of fish on the fish farm,
 - (ii) the prevention of escape of fish from the fish farm,
 - (iii) the recovery of escaped fish.
- (3) In particular, an inspection under subsection (1) may include—
- (a) taking samples (including samples of equipment),
 - (b) examining, and taking copies of, documents or records.
- (4) An inspector may arrange for the carrying out of such tests as the inspector considers necessary, using samples taken during an inspection under subsection (1), for any of the purposes mentioned in subsection (2).

Enforcement

6 Enforcement notices

- (1) Where the Scottish Ministers are satisfied that a person who carries on a business of fish farming does not have satisfactory measures in place for any of the purposes mentioned in subsection (2) in respect of the fish farm, the Scottish Ministers may serve a notice (“an enforcement notice”) on the person.
- (2) The purposes are—
- (a) the prevention, control and reduction of parasites,
 - (b) the containment of fish,
 - (c) the prevention of escape of fish,
 - (d) the recovery of escaped fish.
- (3) Where the Scottish Ministers are satisfied that a person who carries on a business of shellfish farming does not have satisfactory measures in place for the purpose of the prevention, control and reduction of parasites in respect of the shellfish farm, the Scottish Ministers may serve a notice (“an enforcement notice”) on the person.

- (4) An enforcement notice served under subsection (1) may require—
- (a) the execution of such works,
 - (b) the taking of such other steps,
- as the Scottish Ministers consider necessary for any of the purposes mentioned in subsection (2).
- (5) An enforcement notice served under subsection (3) may require—
- (a) the execution of such works,
 - (b) the taking of such other steps,
- as the Scottish Ministers consider necessary for the purpose mentioned in that subsection.
- (6) An enforcement notice must specify the date by which the requirements of the notice, or any particular requirements of it, are to be fulfilled.
- (7) A person commits an offence if, without reasonable excuse, the person contravenes an enforcement notice.
- (8) A person who commits an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) Where the Scottish Ministers are satisfied that an enforcement notice is contravened in respect of the prevention, control and reduction of parasites, they may (whether or not proceedings have been taken for an offence under subsection (7)) authorise an inspector to take any action they consider necessary in fulfilment of the requirements of the notice in that regard.
- (10) Any expenses reasonably incurred by an inspector in taking action authorised under subsection (9) may be recovered by the Scottish Ministers from the person on whom the enforcement notice was served.
- (11) The Scottish Ministers may publicise the serving of an enforcement notice; and may do so to such extent, in such manner and in such form as they think fit.

Code of practice

7 Code of practice

- (1) The Scottish Ministers may by order approve, whether in whole or in part, any code of practice issued (whether by them or by another person) for any of the purposes of—
- (a) giving practical guidance to persons who carry on a business of—
 - (i) fish farming,
 - (ii) shellfish farming,
 - (b) promoting what appear to the Scottish Ministers to be desirable practices by such persons,
- with respect to any of the matters mentioned in subsection (2).
- (2) The matters are—
- (a) the prevention, control and reduction of parasites on—
 - (i) fish farms,

- (ii) shellfish farms,
 - (b) the containment of fish on fish farms,
 - (c) the prevention of escape of fish from fish farms,
 - (d) the recovery of escaped fish.
- 5 (3) The Scottish Ministers may at any time by order approve a modification of an approved code or withdraw approval of such a code or modification.
- (4) Before making an order under this section the Scottish Ministers must consult such persons as they consider appropriate.

8 Monitoring and enforcement: code of practice

- 10 (1) The Scottish Ministers are to monitor compliance with any approved code.
- (2) Where the Scottish Ministers are satisfied that a person who carries on a business of—
- (a) fish farming,
 - (b) shellfish farming,
- 15 is not complying with an approved code in a material regard, the Scottish Ministers may serve a notice on that person.
- (3) Where it appears to the Scottish Ministers that a person who carries on a business of—
- (a) fish farming,
 - (b) shellfish farming,
- 20 is likely not to comply with an approved code in a material regard, the Scottish Ministers may serve a notice on the person.
- (4) A notice served by virtue of subsection (2) or (3) may require—
- (a) the execution of such works,
 - (b) the taking of such other steps,
- 25 as the Scottish Ministers consider necessary for securing compliance with the approved code in any particular respect.
- (5) Subsections (6) to (11) of section 6 apply to a notice served by virtue of subsection (2) or (3) as they apply to an enforcement notice.

Powers of inspectors and offences

9 Powers of inspectors: entry

- 30 (1) An inspector may enter any fish farm or shellfish farm for the purposes of—
- (a) ascertaining whether any power conferred by or under this Part should be exercised,
 - (b) doing anything in pursuance of the exercise of that power.
- (2) An inspector acting under subsection (1) must, if required, produce evidence of the inspector's authority.
- 35 (3) Any power of entry conferred on an inspector by or under this Part must be exercised at a reasonable hour unless the inspector considers the case is one of urgency.

10 Entry: supplementary

- (1) This section applies to any inspector exercising any power of entry conferred on an inspector by or under this Part.
- (2) The inspector may take with the inspector—
- 5 (a) such other persons,
(b) such equipment and vehicles,
as the inspector considers necessary.
- (3) The inspector may require any person on a fish farm or shellfish farm who falls within subsection (4) to give the inspector such assistance as the inspector may reasonably require.
- 10 (4) The following persons fall within this subsection—
- (a) the person who carries on the business of fish farming or shellfish farming,
(b) any other person appearing to the inspector to be under the direction or control of that person,
- 15 (c) any other person appearing to the inspector to be concerned with the operation of the farm.

11 Offences: general

- (1) A person commits an offence who—
- 20 (a) fails, without reasonable excuse, to comply with a requirement imposed by an inspector by virtue of this Part,
(b) obstructs an inspector in the exercise of the inspector's powers under this Part.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

*Interpretation of Part 1***12 Interpretation: Part 1**

In this Part, unless the context otherwise requires—

“approved code” means a code of practice approved, for the time being, by an order under section 7; and includes any part or modification of a code of practice so approved;

30 “fish” does not include shellfish but otherwise means fish of any kind;

“fish farming” means the keeping of live fish with a view to their sale or to their transfer to other waters; but only where such activity is registered as a business by virtue of section 7(2) or (3) of the 1983 Act;

“fish farm” means any place used for the purposes of fish farming;

35 “inspector” means a person authorised by the Scottish Ministers to act as an inspector under this Act, either generally or for the particular purpose in question;

“parasite” has the meaning given by section 4(1);

“shellfish” includes crustaceans and molluscs of any kind, and includes any brood, ware, half-ware, spat or spawn of shellfish;

“shellfish farming” means the cultivation or propagation of shellfish with a view to their sale or their transfer to other waters or land; but only where such activity is registered as a business by virtue of section 7(4) of the 1983 Act;

“shellfish farm” means any place used for the purposes of shellfish farming.

PART 2

GYRODACTYLUS SALARIS: CONTAINMENT AND TREATMENT

Order under section 2 of the 1937 Act: additional powers

13 Order under section 2 of the 1937 Act: additional powers

After section 2 of the 1937 Act (power to designate areas), insert—

“2ZA *Gyrodactylus salaris*: additional powers when designating area under section 2

An order by the Scottish Ministers under section 2 designating an area (“the designated area”) may, where they suspect that the waters are or may become infected waters by reason of the presence of the parasite *Gyrodactylus salaris*—

(a) prohibit the taking into or out of the designated area, by any person who is not an inspector or other person exercising functions by arrangement with the Scottish Ministers in relation to this Act, of—

(i) any vehicle (or any vehicle of such description as may be specified in the order);

(ii) such equipment, material or substance (not falling within section 2(2)(a)) as may be so specified,

unless the vehicle, equipment, material or substance concerned, immediately before the taking in or as the case may be out, has been subjected to such process of disinfection as may be so specified;

(b) prohibit or regulate the taking into or out of the designated area of dead fish;

(c) regulate entry to or exit from the designated area.”.

Preliminary designation of area by order

14 Preliminary designation of area by order

After section 2ZA of the 1937 Act (as inserted by section 13 above), insert—

“2ZB Preliminary designation of area: *Gyrodactylus salaris*

(1) If at any time the Scottish Ministers have reasonable grounds for suspecting that any of the inland waters of the United Kingdom or the marine waters adjacent to the United Kingdom are infected waters by reason of the presence of the parasite *Gyrodactylus salaris*, they may by order made by statutory instrument designate such part (or all) of—

- (a) the inland waters of Scotland;
 - (b) the marine waters adjacent to Scotland,
- as they consider appropriate.

(2) An order under subsection (1) may also—

(a) prohibit or regulate the taking into or out of the area designated in the order of such of the following (or of such description of them) as may be specified in the order—

- (i) live fish;
- (ii) live eggs of fish;
- (iii) foodstuff for fish;

(b) regulate the movement within the area of such of those things (or of such description of them) as may be specified in the order,

until the expiry of the period of 30 days beginning with the day the order is made.

(3) Where an order under subsection (1) (a “first order”) is made, and the Scottish Ministers consider it appropriate to do so, they may by order made by statutory instrument before the expiry of the period of 30 days specified in the first order extend the period to 60 days; and if they do so, any provision in the first order which does any of the matters referred to in paragraph (a) or (b) of subsection (2) applies until the expiry of the period of 60 days beginning with the day the first order was made.

(4) A statutory instrument containing an order under subsection (1) or (3) is to be laid before the Scottish Parliament after it is made.

(5) Any person who intentionally contravenes any provision of an order under subsection (1) or (3) is guilty of an offence.

(6) In subsection (1)—

“inland waters” means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows;

“marine waters adjacent to the United Kingdom” means waters (other than inland waters) within the seaward limits of the territorial sea adjacent to the United Kingdom;

“marine waters adjacent to Scotland” means so much of the marine waters adjacent to the United Kingdom as are adjacent to Scotland.”.

Containment and treatment: additional powers

15 Construction of barriers to movement of fish, treatment of waters with chemical agents etc.

After section 5 of the 1937 Act (duty to examine waters on demand of fishery board or occupier) insert—

“5A Gyrodactylus salaris: construction of barriers to movement of fish

- (1) The Scottish Ministers may arrange for the construction of barriers to the movement of fish in any inland waters in Scotland where they consider it appropriate to do so for either or both of the following purposes—
- 5 (a) to prevent the spread of the parasite *Gyrodactylus salaris*;
- (b) to facilitate treatment with chemical agents with a view to eradicating the parasite from the waters concerned.
- (2) Where the Scottish Ministers arrange for the construction of a barrier in pursuance of subsection (1), they may arrange for the—
- 10 (a) maintenance;
- (b) dismantling,
- of the barrier.
- (3) If the Scottish Ministers are satisfied that it is appropriate to do so for the purpose of enabling them to exercise their power under subsection (1), they may purchase land in Scotland compulsorily.
- 15 (4) In subsection (1), “inland waters” has the same meaning as in section 2ZB(6).

5B Gyrodactylus salaris: treatment of waters with chemical agents

- (1) The Scottish Ministers may, where they consider it appropriate to do so, arrange for the treatment with chemical agents of any waters mentioned in subsection (2) with a view to eradicating the parasite *Gyrodactylus salaris*.
- 20 (2) The waters are any waters in an area designated by order under section 2 by virtue of the Scottish Ministers suspecting that they are or may become infected waters by reason of the presence of the parasite *Gyrodactylus salaris*.”.

16 Further powers by regulations under section 31(1) of the 2003 Act

In section 31(1) of the 2003 Act (salmon fishing: general regulations), after paragraph (f), insert “;

- (g) the closure or alteration of any means for the passage of salmon through, round or over dams, lades or water wheels”.

17 Clearance of certain fish farms

After section 5B of the 1937 Act (as inserted by section 15 above), insert—

“5C Clearance of certain fish farms

- (1) The Scottish Ministers may, where they consider it appropriate to do so, by notice in writing served on any person who carries on a business of fish farming in any inland or marine waters mentioned in subsection (2), impose any of the requirements mentioned in subsection (3).
- 35 (2) The waters are any inland or marine waters in an area designated by order under section 2 by virtue of the Scottish Ministers suspecting that they are or may become infected waters by reason of the presence of the parasite *Gyrodactylus salaris*.
- 40

- (3) The requirements referred to in subsection (1) are—
- (a) the withdrawal of all fish from the waters of the farm;
 - (b) the draining, cleaning and disinfection of all pools and cages in the farm;
 - (c) the destruction of all—
 - (i) dead fish;
 - (ii) live fish withdrawn from the farm which show clinical signs of the disease known as gyrodactylosis caused by the parasite *Gyrodactylus salaris*;
 - (iii) live fish withdrawn from the farm which show signs of the presence of the parasite;
 - (d) the cleaning and disinfection or destruction of equipment, material or substances liable to be contaminated with the parasite;
 - (e) that the repopulation of the farm may take place only when the Scottish Ministers authorise it by notice in writing served on the person carrying on the business of the farm.
- (4) Any person who intentionally contravenes any requirement of a notice served on the person under subsection (1) is guilty of an offence.

5D Failure to comply with requirements of notice under section 5C(1): inspector’s powers

- (1) If any person on whom notice under section 5C(1) is served fails to comply with any requirement of the notice, without prejudice to any proceedings in relation to such failure, an inspector may enter on the fish farm to which the notice relates and take or arrange the taking of such steps as appear to the inspector to be necessary to—
- (a) ensure compliance with the requirement;
 - (b) remedy the consequences of a failure to comply.
- (2) An inspector acting under subsection (1) must, if required, produce evidence of the inspector’s authority.
- (3) All reasonable costs of the exercise of an inspector’s powers under subsection (1) are recoverable by the Scottish Ministers from the person on whom the notice under section 5C(1) was served.”.

18 *Gyrodactylus salaris*: Scottish Ministers’ powers to take other measures

After section 5D of the 1937 Act (as inserted by section 17 above), insert—

“5E *Gyrodactylus salaris*: Scottish Ministers’ powers to take other measures

- (1) The Scottish Ministers may take such other measures as they consider appropriate for the purpose of eradicating or preventing or limiting the spread of the parasite *Gyrodactylus salaris* in—
- (a) inland waters in Scotland;
 - (b) marine waters adjacent to Scotland.

- (2) In subsection (1), “inland waters” and “marine waters adjacent to Scotland” have the same meanings as in section 2ZB(6).”.

19 Gyrodactylus salaris: Scottish Ministers’ power to make payments

After section 5E of the 1937 Act (as inserted by section 18 above), insert—

“5F Gyrodactylus salaris: Scottish Ministers’ power to make payments

- (1) The Scottish Ministers may, in accordance with a scheme made by them by order, make payments in respect of such matters, as may be specified by them by order, in connection with the exercise of their powers under section 2ZA, 2ZB, 5A, 5B, 5C or 5E.
- (2) But payments under subsection (1) may not be made in relation to fish destroyed in pursuance of the exercise of those powers.
- (3) An order under subsection (1) may, in particular, include provision—
- (a) regulating applications for, and the method of payment of, any amount payable by virtue of this section;
 - (b) as to the amount payable and the basis on which those amounts are ascertained;
 - (c) as to conditions that must be met for payments to be made;
 - (d) as to circumstances where payments may not be made.
- (4) An order under subsection (1) may make different provision for different purposes.
- (5) An order under subsection (1) shall be made by statutory instrument, and no order shall be made unless a draft of the order has been laid before, and approved by resolution of, the Scottish Parliament.”.

PART 3

FISHERIES

Salmon and freshwater fisheries

20 Use of gaff, tailer or landing net

- (1) In section 3 of the 2003 Act (use of gaff, tailer or landing net)—
- (a) for “gaff, tailer or” substitute “knotless non-metallic”,
 - (b) after “net” insert “(that is, a net the mesh of which is knotless and made of non-metallic material)”.
- (2) The title to section 3 of the 2003 Act becomes “**Use of landing nets**”.

21 Rod and line

- (1) After section 3 of the 2003 Act insert—

“3A Fishing by rod and line

(1) For the purposes of this Act, a person shall be treated as fishing for or taking fish by rod and line in the circumstances set out in subsection (2), (3) or (4) only if the condition specified in the relevant subsection is met.

(2) Where a person—

(a) is fishing for or taking salmonids, and

(b) is not doing so from a boat,

the condition is that the person uses a single rod and line and that the rod is being held by the person.

(3) Where a person—

(a) is fishing for or taking freshwater fish other than salmonids, and

(b) is not doing so from a boat,

the condition is that the person uses no more than 4 rods for that purpose at any one time.

(4) Where a person—

(a) is fishing for or taking fish, and

(b) is doing so from a boat;

the condition is that no more than 4 rods are used on the boat for that purpose at any one time.

(5) In this section, “salmonids” means all fish of the family Salmonidae.”.

(2) In section 4 of the 2003 Act (meaning of “rod and line”)—

(a) in subsection (1)—

(i) the word “single” is repealed,

(ii) for the words “pointing, or by striking or dragging for fish” substitute “foul hooking”,

(b) after subsection (2), insert—

“(3) In subsection (1)—

“foul hooking” means pointing, or any other method of hooking or attempting to hook a fish other than by inducing the fish to take the hook in its mouth by reason of the bait or lure;

“set line” means a fishing line left unattended in water and having attached to it one or more lures or baited hooks.”.

22 Prohibition against using pike gags and certain keepnets

After section 5 of the 2003 Act, insert—

“5A Prohibition against using pike gags and certain keepnets

(1) Any person who uses a pike gag in relation to the fishing for or taking of fish shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who uses—

- (a) a knotted keepnet (that is, a keepnet the mesh of which is knotted),
- (b) a metallic keepnet, (that is, a keepnet the mesh of which is made of metallic material),

in relation to the fishing for or taking of fish shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (3) Without prejudice to section 294 (attempts to commit crime) of, and paragraph 10 of Schedule 3 to, the Criminal Procedure (Scotland) Act 1995, any person who attempts to commit or who does any act preparatory to the commission of the offence mentioned in subsection (1) or (2) above shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.
- (4) In subsection (1), “pike gag” means a device used for the purpose of keeping the jaws of a fish open by inserting it into the mouth of the fish.”.

23 Close times for freshwater fish

After section 17 of the 2003 Act (annual close time for trout), insert—

“Close times for freshwater fish

17A Weekly close time for freshwater fish

- (1) The Scottish Ministers may by order, after consulting such persons as they consider appropriate, specify a weekly close time for freshwater fish.
- (2) An order under subsection (1) may make different provision for different species of freshwater fish.
- (3) During a weekly close time specified by virtue of subsection (1), no person shall fish for or take such freshwater fish as are so specified in relation to that close time.
- (4) Any person who contravenes an order made under this section shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) A person who commits an offence under this section may be convicted on the evidence of one witness.
- (6) An order under subsection (1) may specify that the effect of the order is applicable only to a particular part or area of Scotland.

17B Annual close time for freshwater fish other than trout

- (1) The Scottish Ministers may by order, after consulting such persons as they consider appropriate, specify an annual close time for freshwater fish other than trout.
- (2) An order under subsection (1) may make different provision for different species of freshwater fish.
- (3) Subject to subsections (4) and (5) below, any person who, during the annual close time specified by virtue of subsection (1) in relation to a species of fish—
 - (a) fishes for or takes such fish in any inland waters; or

(b) is in possession of such fish,
shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) It shall not be an offence under this section for the owner or occupier of any water where fish in relation to which an annual close time is specified by virtue of subsection (1) are kept in captivity or artificially reared or fed, or any person employed by such a person, to take such fish from such water during the annual close time—

(a) for scientific or breeding purposes;

(b) for the purpose of removing them or having them removed, alive, to other waters.

(5) It shall not be an offence under this section for a person to whom fish are consigned, whether by sale or otherwise, for the purpose mentioned in subsection (4)(b) above, to be in possession of such fish.

(6) A person who commits an offence under this section may be convicted on the evidence of one witness.

(7) An order under subsection (1) may specify that the effect of the order is applicable only to a particular part or area of Scotland.”.

24 Exemption from certain offences

(1) In section 28(2)(a) of the 2003 Act (exemption from certain offences in respect of acts done for scientific and other purposes: fish other than salmon), after “17” insert “, 17A, 17B”.

(2) In section 30 of that Act (exemptions in relation to fish farming)—

(a) in subsection (1)—

(i) after “(c),” insert “6, 8,”,

(ii) for “and 22(1)” substitute “, 22(1) and 23”,

(b) in subsection (5), after “17(2)(b),” insert “17B(3)(b),”.

25 Freshwater fish conservation regulations

(1) After section 51 of the 2003 Act (financial contributions towards organisations developing freshwater fisheries), insert—

“Conservation measures

51A Freshwater fish conservation regulations

(1) The Scottish Ministers may make regulations under this section if they consider that it is necessary or expedient to do so for the conservation of freshwater fish.

(2) Regulations under this section shall not be taken to be for something other than the conservation of freshwater fish by reason only that they also have effect in relation to the management of freshwater fisheries for exploitation.

- (3) In considering whether or not it is necessary or expedient to make regulations under this section the Scottish Ministers shall have regard to any representations made to them by any person having an interest in fishing for or taking freshwater fish, or in the environment.
- 5 (4) Regulations under this section—
- (a) may be made in relation only to freshwater fisheries;
 - (b) may make different provision for different species of freshwater fish.
- 10 (5) Without prejudice to the generality of the power conferred by this section, regulations under this section may prohibit the use of specified baits and lures for the purposes of the definition of “rod and line” in section 4(1) of this Act in the case of fishing for freshwater fish.
- (6) Regulations under this section which prohibit the use of specified baits and lures for the purposes mentioned in subsection (5) shall specify, subject to such exceptions as may be so specified—
- 15 (a) baits and lures or classes of baits or lures, the use of which is prohibited;
- (b) times when the regulations apply;
- (c) areas to which the regulations apply.
- (7) Regulations under this section may—
- 20 (a) confer upon constables and water bailiffs such powers of enforcement, additional to those otherwise available under this Act, as the Scottish Ministers consider necessary or expedient for the purposes of the regulations;
- (b) make provision generally in relation to any river, or in relation to any time or season;
- 25 (c) make different provision for different parts of a river, or for different cases or classes of case.
- (8) Any person who—
- (a) acts in contravention of; or
 - (b) fails to take any action required of that person by, or to comply with any requirement imposed on that person by,
- 30 regulations made under this section shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) A person who commits an offence under this section may be convicted on the evidence of one witness.
- 35 (10) Paragraphs 9A and 11 to 15 of schedule 1 to this Act shall have effect in relation to the making of regulations under this section.”.
- (2) In section 4(1) of the 2003 Act (meaning of “rod and line”), at the end add “or, in relation to fishing for freshwater fish, under section 51A of this Act”.

Sea fisheries

40 **26 Enforcement of Community obligations**

In section 30(1) of the Fisheries Act 1981 (c. 29) (enforcement of Community rules)—

- (a) after “restrictions”, where it first appears, insert “, and enforceable Community obligations,”,
- (b) in paragraph (a), after “restriction” insert “or obligation”,
- (c) in paragraph (c), after “restrictions” insert “and obligations”.

5

PART 4

MISCELLANEOUS

27 **Unauthorised introduction of fish into certain marine waters**

After section 2B of the 1937 Act (designated areas: authority to remove fish), insert—

“2C **Unauthorised introduction of fish into certain marine waters**

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(1) With a view to preventing any marine waters adjacent to Scotland from becoming infected waters, the Scottish Ministers may by order made by statutory instrument specify such parts of those waters as they consider appropriate.

15

(2) An area specified under subsection (1) is a “specified area” for the purposes of this section.

(3) A person is guilty of an offence who, without the prior written consent of the Scottish Ministers, intentionally introduces into waters within a specified area live fish which—

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(a) are of such species as may be specified by the Scottish Ministers by order;

(b) are from waters which are not part of that specified area; and

(c) have at any time been in salt water which forms part of—

25

(i) such inland waters of the United Kingdom as may be designated by the Scottish Ministers by order; or

(ii) such marine waters adjacent to the United Kingdom as may be so designated.

(4) The Scottish Ministers may make regulations in relation to the obtaining of the consent mentioned in subsection (3) and in particular may include provision—

30

(a) regulating the form of the application for such consent;

(b) specifying the information to be provided and any assessment to be undertaken as part of an application;

(c) specifying the time by which an application must be made before the proposed introduction of the fish.

35

(5) Regulations under subsection (4) may make different provision for different purposes.

(6) The power conferred by—

(a) subsection (1) or (3)(a) or (c)(i) or (ii) to make an order;

(b) subsection (4) to make regulations,

must be exercised by statutory instrument; and a statutory instrument containing any such order or regulations is subject to annulment in pursuance of a resolution of the Scottish Parliament.

- (7) In subsection (1), “marine waters adjacent to Scotland” has the same meaning as in section 2ZB(6).”

28 Unauthorised introduction of fish into inland waters

- (1) Section 24 of the 2003 Act is repealed.
(2) After section 33 of that Act (salmon fishing: regulations as to baits and lures), insert—

“Unauthorised introduction of fish into inland waters

33A Unauthorised introduction of fish into inland waters

- (1) A person shall be guilty of an offence if the person intentionally introduces any live fish or live spawn of any fish into inland waters.
(2) A person shall be guilty of an offence if the person possesses any live fish or live spawn of any fish with the intention of introducing it into inland waters.
(3) A person shall not be guilty of an offence under this section if—
(a) the inland waters concerned constitute or are included in a fish farm, or
(b) the appropriate authority have previously consented in writing.
(4) Where—
(a) the fish concerned are salmon or the spawn concerned are salmon spawn, and
(b) the inland waters concerned are in a salmon fishery district for which there is a district salmon fishery board,
the district salmon fishery board are the appropriate authority.
In any other case the Scottish Ministers are the appropriate authority.
(5) Any person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
(6) A person who commits an offence under this section may be convicted on the evidence of one witness.”

29 Payments in respect of fish destroyed

- (1) The Scottish Ministers may, in accordance with a scheme made by them by order, make payments in respect of any fish destroyed in pursuance of the exercise of such powers of the Scottish Ministers under or by virtue of such enactments as may be specified by them by order.
(2) An order under subsection (1) may, in particular, include provision—
(a) regulating applications for, and the method of payment of, any amount payable by virtue of this section,
(b) as to the amount payable and the basis on which those amounts are ascertained,
(c) as to conditions that must be met for payments to be made,
(d) as to circumstances where payments may not be made.

- (3) In subsection (1), “fish” has the same meaning as in Part 1.

30 Payments for certain purposes

- 5 (1) The Scottish Ministers may make payments of such amount and subject to such conditions as they may determine to any person or group of persons for any of the purposes mentioned in subsection (2) in relation to any of the matters mentioned in subsection (3).
- (2) The purposes are—
- 10 (a) development,
 (b) promotion,
 (c) organisation,
 (d) research.
- (3) The matters are—
- 15 (a) fish farming,
 (b) shellfish farming,
 (c) other aspects of aquaculture,
 (d) sea fisheries,
 (e) the sea fish industry,
 (f) salmon fisheries,
 (g) freshwater fisheries.
- 20 (4) A payment under this section may be limited so as to be made in connection to a specified part or area of Scotland.
- (5) For the purposes of this section, a person is regarded as engaged in the sea fish industry if the person carries on or is employed in the business of catching, processing, transporting or selling sea fish or sea fish products.
- 25 (6) In this section—
- “fish farming” has the same meaning as in Part 1, except that such activity need not be so registered as a business;
- “migratory trout” means any species of trout which migrates to and from the sea;
- “salmon” includes any fish of the salmon species;
- 30 “sea fish” means fish of any kind found in the sea, including shellfish but not salmon or migratory trout;
- “shellfish” has the same meaning as in Part 1;
- “shellfish farming” has the same meaning as in Part 1, except that such activity need not be so registered as a business.

31 Information about fish farming and shellfish farming: economic, social and environmental aspects

- (1) The Scottish Ministers may make an order under this section for the purpose of obtaining information in relation to the economic, social and environmental aspects of—

- (a) fish farming,
 - (b) shellfish farming.
- (2) An order under this section may require any person who carries on a business of fish farming or shellfish farming—
- (a) to provide to the Scottish Ministers such information, in writing, as may be specified in the order in relation to the purpose mentioned in subsection (1),
 - (b) to compile such records as may be so specified in relation to that purpose,
 - (c) to retain for such period (not exceeding 3 years) as may be so specified, any records compiled by virtue of paragraph (b).
- (3) An inspector may require the production of, and inspect and take copies of, any records which a person is required to retain by virtue of an order made under this section.
- (4) Information provided, records compiled and records retained under this section may be provided, compiled and retained electronically.
- (5) A person commits an offence who—
- (a) fails, without reasonable excuse, to comply with a requirement of an order under this section,
 - (b) in purported compliance with a requirement of an order under this section knowingly provides any information or compiles a record which is false in a material particular,
 - (c) knowingly alters a record compiled in accordance with a requirement of an order under this section so that the record becomes false in a material particular.
- (6) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) In this section, “fish farming”, “inspector” and “shellfish farming” have the same meanings as in Part 1.

PART 5

GENERAL

32 Crown application

- (1) This Act binds the Crown.
- (2) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable; but the provisions of this Act and any provisions made under it apply to persons in the service of the Crown as they apply to other persons.
- (3) The Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes a contravention of any provision made by or under this Act.

33 Offences by bodies corporate etc.

- (1) Where an offence under this Act committed—
 - (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

- (i) is a director, manager or secretary of the body corporate, or
- (ii) purports to act in any such capacity,
- (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

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- (i) is a partner, or

- (ii) purports to act in that capacity,

- (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

10

- (i) is concerned in the management or control of the association, or

- (ii) purports to act in the capacity of a person so concerned,

the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

15

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

34 Minor and consequential amendments

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The schedule to this Act, which contains minor amendments and amendments consequential on this Act, has effect.

35 Ancillary provision

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.

25

- (2) An order under this section may modify any enactment, instrument or document.

36 Orders

- (1) Any power conferred by this Act on the Scottish Ministers to make an order—

- (a) must be exercised by statutory instrument,

- (b) may be exercised so as to make different provision for different purposes.

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- (2) A statutory instrument containing an order made under this Act (except an order under section 38(2)) is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Parliament.

- (3) A statutory instrument containing an order under—

- (a) section 29(1),

35

- (b) section 35 containing provisions which add to, replace or omit any part of the text of an Act,

is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

37 Interpretation: general

In this Act—

“the 1937 Act” means the Diseases of Fish Act 1937 (c. 33);

“the 1983 Act” means the Diseases of Fish Act 1983 (c. 30);

5 “the 2003 Act” means the Salmon and Freshwater Fisheries (Consolidation)
(Scotland) Act 2003 (asp 15).

38 Short title and commencement

(1) This Act may be cited as the Aquaculture and Fisheries (Scotland) Act 2006.

10 (2) The provisions of this Act, except this section and sections 12 and 35 to 37, come into
force on such day as the Scottish Ministers may by order appoint.

(3) Different days may be appointed under subsection (2) for different purposes.

SCHEDULE
(introduced by section 34)

MINOR AND CONSEQUENTIAL AMENDMENTS

Diseases of Fish Act 1937 (c. 33)

- 5 1 In the 1937 Act—
- (a) in section 6—
- (i) in subsection (2), after paragraph (ab) insert—
- “(ac) to inspect any land in Scotland for the purpose of—
- (i) assessing whether any disinfection process specified in an order
10 under section 2 by virtue of section 2ZA(a) is being complied
 with;
- (ii) the exercise by the Scottish Ministers of any of their powers under
 section 5A or 5B;”
- (ii) after that subsection insert—
- 15 “(2A) Any inspector authorised by the Scottish Ministers to act as such may, for the
 purpose of exercising any powers or performing any duties under this Act, be
 accompanied by such persons as he may authorise in writing for the purpose,
 and the inspector and any such person may for that purpose take onto any fish
 farm or any land concerned such vehicles or equipment as the inspector
20 considers appropriate and inspect and take copies of such documents or records
 as he considers appropriate.
- Any person who refuses to admit or intentionally obstructs an inspector or such
 an authorised person in the exercise of his powers under this subsection is
 guilty of an offence.”
- 25 (b) in section 7(1A)—
- (i) after “served” insert—
- “(a) for the purpose of section 5C(1) on a person carrying on the business of
 fish farming in inland waters;
- (b)”
- 30 (ii) for “waters may” substitute “waters,
 may”
- (c) in section 8(1), after “article” insert “or any vehicle, equipment, material,
 substance or dead fish”,
- (d) in section 9—
- 35 (i) in paragraph (b), after “1(6)” insert “, 2ZB(1) or (3)”,
- (ii) after paragraph (c), insert—
- “(ca) the form of notice to be served under section 5C;”
- (iii) in paragraph (d), after “articles” insert “or any vehicle, equipment, material,
 substance or dead fish”,

- (e) in section 10(1), in the definition of “infected” for “gyrodactyliasis” substitute “gyrodactylosis”.

Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42)

2 In section 1(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act
5 1947 (procedure for compulsory purchase of land by local authorities, Ministers and others), after paragraph (e) insert—

“(ea) by the Scottish Ministers under section 5A(3) of the Diseases of Fish Act 1937 (c.33);”.

Sea Fish (Conservation) Act 1967 (c. 84)

10 3 In the Sea Fish (Conservation) Act 1967—

(a) in section 4 (licensing of fishing boats), subsections (9A) and (9B) are repealed,

(b) in section 11 (penalties for offences)—

(i) in subsection (1)(b), “, 4(9A)” is repealed,

(ii) in subsection (2), for “, (6) and (9A)” substitute “and (6)”,

15 (iii) in subsection (2)(c), for “, (6) or (9A)” substitute “or (6)”,

(iv) in subsection (2)(d), for “, (6) or (9A)” substitute “or (6)”,

(v) in subsection (3), for “, (6) or (9A)” substitute “or (6)”,

(c) in section 15(2)(b) (powers of British sea-fishery officers), for “, (6) or (9A)” substitute “or (6)”.

20 *Fisheries Act 1981 (c. 29)*

4 In section 30 of the Fisheries Act 1981 (enforcement of Community rules) in subsection (5)(b), for “(5)” substitute “(4)”.

Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (asp 15)

5 (1) The 2003 Act is amended as follows.

25 (2) In section 17 (annual close time for trout), after subsection (4) insert—

“(5) A person who commits an offence under this section may be convicted on the evidence of one witness.”.

(3) In section 31(5)(b) (salmon fishing: general regulations), for “24” substitute “18”.

(4) In section 48 (increased availability of, and protection for, freshwater fishing)—

30 (a) after subsection (2), insert—

“(2A) In prescribing the area in relation to which a protection order is made, the Scottish Ministers need not prescribe the entire area to which the proposals, whether modified or not, relate.”.

35 (b) in subsection (4), after “Ministers” where it appears for the third time, insert “and subject to subsection (4B)”,

(c) after that subsection, insert—

“(4A) At any time, the Scottish Ministers may, after consultation with the person submitting the proposals referred to in subsection (3)(a), modify in such way as they think fit —

(a) those proposals, or

(b) those proposals as modified by the person by virtue of subsection (4) above.

(4B) Proposals modified by the Scottish Ministers by virtue of subsection (4A) may not be modified by the person referred to in that subsection; but that person may at any time withdraw them.”,

(d) in subsection (10), after “(4)” insert “or (4A)”.

(5) In schedule 1—

(a) after paragraph 9(a) insert—

“(aa) references to proposals shall be construed as the proposals of the Scottish Ministers in relation to the proposed regulations in question;”,

(b) after paragraph 9 insert—

“Freshwater fish conservation regulations

9A(1) Before making regulations under section 51A of this Act, the Scottish Ministers shall consult such persons as they consider appropriate and then proceed in accordance with paragraphs 11 to 15 below.

(2) In the application of paragraphs 11 to 15 below to regulations made under section 51A of this Act—

(a) references to an applicant and to an application shall be omitted;

(b) references to proposals shall be construed as the proposals of the Scottish Ministers in relation to the proposed regulations in question;

(c) paragraph 11(3) shall be omitted;

(d) in paragraph 12(a), the reference to paragraph 10 is to be read as if there were substituted a reference to paragraph 9A(1).”.

(6) In paragraph 2 of schedule 3 (provisions as to making, variation and revocation of protection orders), the words “in the Edinburgh Gazette and” are repealed.

(7) For paragraph 8 of that schedule substitute—

“8 (1) Before the Scottish Ministers make an order varying a protection order, they shall by notice make such publication as they think fit of the general effect of the proposed variation and specify a time within which, and the manner in which, representations or objections with respect to the proposed variation may be made.

(2) The Scottish Ministers may cause a copy or copies of the notice referred to in sub-paragraph (1) above to be affixed by a person duly authorised by them in writing to some conspicuous object or objects on the banks of such waters at such places as the Scottish Ministers may direct.

(3) If no representations or objections are duly made, or if any so made are withdrawn, the Scottish Ministers may make an order varying the protection order.

5

(4) If any representation or objection duly made is not withdrawn, the Scottish Ministers may forthwith make an order or may cause a local inquiry to be held.

(5) Sub-paragraphs (2) to (8) of paragraph 5 above shall apply in relation to an inquiry under this paragraph as they apply in relation to an inquiry under that paragraph, but as if in sub-paragraph (3) of that paragraph for the word “proposals” there were substituted the words “proposed variation”.

10

(6) Paragraph 6 and 7 above shall apply in relation to an order varying a protection order as they apply in relation to a protection order, but as if in paragraph 6 for the reference to paragraph 5 above there were substituted a reference to this paragraph.”.

(8) In paragraph 9(1) of that schedule, for “may” where it first appears substitute “shall”.

Aquaculture and Fisheries (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision in relation to fish farms and shellfish farms; in relation to the parasite *Gyrodactylus salaris*; in relation to salmon and freshwater fisheries and sea fisheries; in relation to payments connected with aquaculture and fisheries; and for connected purposes.

Introduced by: Ross Finnie
On: 29 June 2006
Bill type: Executive Bill

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